

Introduced by Senator MigdenJanuary 17, 2007

An act to amend Section 18521 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as introduced, Migden. Taxation.

The Personal Income Tax Law imposes tax on taxable income and provides, among other things, that specified definitions govern the construction of that law. Existing law allows married couples and registered domestic partners to file joint or separate state tax returns, as specified.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18521 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 18521. (a) (1) Except as otherwise provided in this section,
- 4 an individual shall use the same filing status that he or she used
- 5 on his or her federal income tax return filed for the same taxable
- 6 year.
- 7 (2) If the Franchise Tax Board determines that the filing status
- 8 used on the taxpayer's federal income tax return was incorrect,
- 9 the Franchise Tax Board may, ~~under~~ pursuant to Section 19033

1 (relating to deficiency assessments), revise the return to reflect a
2 correct filing status.

3 (3) If either spouse or domestic partner was a nonresident for
4 any portion of the taxable year, and the couple files a joint federal
5 income tax return, the spouses or domestic partners shall be
6 required to file a joint nonresident return.

7 (b) In the case of an individual who is not required to file a
8 federal income tax return for the taxable year, that individual may
9 use any filing status on the return required under this part that he
10 or she would be eligible to use on a federal income tax return for
11 the same taxable year if a federal income tax return was required.

12 (c) Notwithstanding subdivision (a), spouses and registered
13 domestic partners, as described in Section 297 of the Family Code,
14 who are registered as domestic partners as of the close of the
15 taxable year, may file separate returns under this part if either
16 spouse or registered domestic partner was either of the following
17 during the taxable year:

18 (1) An active member of the Armed Forces or any auxiliary
19 branch thereof.

20 (2) A nonresident for the entire taxable year who had no income
21 from a California source.

22 (d) Notwithstanding subdivision (a), registered domestic
23 partners, as described in Section 297 of the Family Code, who are
24 registered as domestic partners as of the close of the taxable year
25 and who are prohibited under federal law from filing a joint federal
26 income tax return, shall either file a joint state income tax return
27 or separate state income tax returns by applying the standards
28 applicable to spouses who file separately pursuant to Section 6013
29 of the Internal Revenue Code. A separate return filed by a domestic
30 partner of a registered domestic partnership shall be subject to the
31 same conditions and limitations applicable to the separate return
32 of a spouse.

33 (e) Except for taxpayers described in subdivision (c), for any
34 taxable year with respect to which a joint return has been filed, a
35 separate return shall not be made by either spouse or domestic
36 partner after the period for either to file a separate return has
37 expired.

38 (f) No joint return shall be made if the spouses or the domestic
39 partners have different taxable years; except that if their taxable
40 years begin on the same day and end on different days because of

1 the death of either or both, then a joint return may be made with
2 respect to the taxable year of each. The above exception shall not
3 apply if the surviving spouse remarries or the surviving domestic
4 partner enters into a new domestic partnership before the close of
5 his or her taxable year, or if the taxable year of either spouse or
6 domestic partner is a fractional part of a year under Section 443(a)
7 of the Internal Revenue Code.

8 (g) In the case of the death of one spouse or domestic partner
9 or both spouses or both domestic partners the joint return with
10 respect to the decedent may be made only by the decedent's
11 executor or administrator; except that, in the case of the death of
12 one spouse or domestic partner, the joint return may be made by
13 the surviving spouse or surviving domestic partner with respect
14 to both that spouse or domestic partner and the decedent if no
15 return for the taxable year has been made by the decedent, no
16 executor or administrator has been appointed, and no executor or
17 administrator is appointed before the last day prescribed by law
18 for filing the return of the surviving spouse or surviving domestic
19 partner. If an executor or administrator of the decedent is appointed
20 after the making of the joint return by the surviving spouse or
21 surviving domestic partner, the executor or administrator may
22 disaffirm the joint return by making, within one year after the last
23 day prescribed by law for filing the return of the surviving spouse
24 or surviving domestic partner, a separate return for the taxable
25 year of the decedent with respect to which the joint return was
26 made, in which case the return made by the survivor shall constitute
27 his or her separate return.